

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

STEVEN MOLE,

Plaintiff,

v.

**Civil No. 9:02-CV-0584
(GLS/DRH)**

**DR. VADLANDI,¹ Marcy Corr.
Facility; MS. DOVLEY, Nurse, Marcy
Corr. Facility; P. SMITH, Nurse,
Marcy Corr. Facility; KANG LEE,
Physician, Clinton Corr. Facility,**

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

STEVEN MOLE
Plaintiff *Pro Se*, 01-A-464
Franklin Correctional Facility
62 Bare Hill Road
P.O. Box 10
Malone, New York 12953

FOR THE DEFENDANTS:

HON. ELIOT SPITZER
Attorney General, State of New York
The Capitol
Albany, New York 13204-2455

CHRISTOPHER W. HALL
Assistant Attorney General

¹"Vadlandi" is actually "Vadlamudi." He has been served and has appeared by counsel in this action.

Gary L. Sharpe
U.S. District Judge

MEMORANDUM-DECISION AND ORDER

I. Introduction

Plaintiff *pro se* Steven Mole (Mole) brings this action pursuant to 42 U.S.C. § 1983. Mole alleges that the defendants violated his Eighth Amendment rights by showing deliberate indifference to his serious medical needs. Pending are Mole's objections to Magistrate Judge David R. Homer's Report-Recommendation. Upon careful consideration of the arguments, the relevant parts of the record, and the applicable law, the court adopts the Report-Recommendation in its entirety.²

II. Procedural History

Mole commenced this action on April 29, 2002. *Dkt. No. 1*. On November 21, 2003, the defendants moved for summary judgment. *Dkt. No. 30*. On November 23, 2004, Magistrate Judge Homer issued a Report-Recommendation which recommended granting the defendants' motion for summary judgment as to all defendants and dismissing Mole's complaint. *Dkt No. 30*. Mole objected. *Dkt. No. 48*. Mole's objection is a reiteration of

²The Clerk is hereby directed to attach the Report-Recommendation to constitute a complete record of the court's decision on this matter.

his complaint and adds nothing new for this court to consider. *Id.*

III. Discussion³

A. Standard of Review

When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a “*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” See 28 U.S.C. § 636(b)(1). After such a review, the court may “accept, reject, or modify, in whole or in part, the findings or the recommendations made by the magistrate judge.” *Id.* This court accepts in their entirety the unobjected-to portions of the Report-Recommendation.

B. Report-Recommendation

Having reviewed the objected-to portion of the record *de novo* and having considered the issues⁴ raised in Mole's objections, this court accepts and adopts the recommendation of Magistrate Judge Homer for

³The court adopts the factual summary in Magistrate Judge Homer's Report-Recommendation and assumes familiarity with the facts alleged in Mole's Complaint. *Dkt. No. 1; Dkt. No. 40.*

⁴ Mole argued in both his opposition papers to defendants' motion for summary judgment and his objections to the Report-Recommendation that he cannot be penalized for failing to exhaust administrative remedies as to defendant Lee because medical matters are not grievable. This conclusion is flawed for the reasons stated in Magistrate Judge Homer's Report-Recommendation.

the reasons stated in the November 23, 2004 Report-Recommendation.

WHEREFORE, for the foregoing reasons, it is hereby

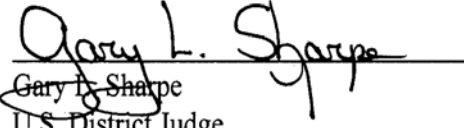
ORDERED that defendants' motion for summary judgment is

GRANTED and the complaint is dismissed with respect to each defendant.

IT IS SO ORDERED.

October 14 , 2005

Albany, New York



Gary L. Sharpe
U.S. District Judge